

§1920. Citations and Fines

(a) Authority to Issue Citations and Fines:

(1) The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain an order of abatement or an administrative fine ("fine") for violations of the statutes contained in the Structural Pest Control Act (commencing with Business and Professions Code Section 8500) or the regulations adopted by the Board.

(2) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute(s) or regulation(s) alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(b) Citation; Assessment of Fine:

Citations may be issued without the assessment of a fine. The amount of any fine to be levied by the Registrar or Deputy Registrar shall be no more than \$5,000. The maximum amount of \$5,000 to be charged only if one or more of the following circumstances apply: (1) the citation involves a violation that has an immediate relationship to the health and safety of another person; (2) the cited person has a history of two or more prior citations of the same or similar violations; (3) the citation involves multiple violations that demonstrate a willful disregard of the law; and (4) the citation involves a violation or violations perpetrated against a senior citizen or disabled person.

In determining whether a citation shall contain an order of abatement or a fine and if a fine is to be imposed, the Registrar or Deputy Registrar shall consider the following factors:

(1) Gravity of the violation.

(2) History of previous violations of the same or similar nature.

(3) The good or bad faith exhibited by the cited person.

(4) Evidence that the violation was willful.

(5) The extent to which the cited person cooperated with the Board's investigation.

(6) The extent to which the cited person has mitigated or attempted to mitigate any damage caused by his or her violation.

(7) Such other factors as the Registrar or Deputy Registrar considers relevant.

(c) Citations for Unlicensed Practice:

The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain order of abatement or a fine against persons who are performing or who have performed services for which a structural pest control license is required under the Structural Pest Control Act. The citation issued under this section shall be separate from and in addition to any other civil or criminal remedies.

(d) Compliance with Orders of Abatement:

When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited.

(e) Contest of Citations:

(1) In addition to requesting a hearing provided for in subdivision (b)(4) of section 125.9 of the code, (hereinafter "administrative hearing"), the person cited may, within ten (10) days after service or receipt of the citation, notify the Registrar or Deputy Registrar, as designated, in writing of his or her request for an informal conference with the designated Registrar or Deputy Registrar. The informal conference shall include at least one, but no more than two, industry members of the Board, as designated by the Registrar.

(2) The informal conference shall be held within 60 days from the receipt of the request of the person cited. At the conclusion of the informal conference, the Registrar or Deputy Registrar may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The decision shall state in writing the reasons for the action and shall be served or mailed to the person within ten (10) days from the date of the informal conference. ~~This decision shall be~~

~~deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.~~

(3) The person cited does not waive his or her request for ~~a~~an administrative hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the Registrar or Deputy Registrar. If the citation is dismissed after the informal conference, the request for ~~a~~an administrative hearing on the matter of the citation shall be deemed to be withdrawn. ~~If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of section 125.9 of the code. If the informal conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but not withdrawn. The cited person shall be entitled to an administrative hearing to contest the modified citation if he or she made a request in accordance with subdivision (b)(4) of section 125.9 of the code for an administrative hearing, within thirty (30) days after service of the original citation. The cited person shall not be entitled to an informal conference to contest a modified citation. If the cited person did not make a request for an administrative hearing after service of the original citation, the decision in the modified citation shall be considered a final order.~~

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

* Shaded area represents another pending rulemaking change waiting OAL approval.

§1970.4. Pesticide Disclosure Requirement.

(a) The primary contractor for fumigation shall have in his or her possession and shall provide to any subcontractor for fumigation a form (See Form 43M-48 (~~New 5/96~~ Rev. 5/05) at the end of this section) signed by the occupants or designated agent of a structure. The primary contractor for fumigation and the subcontractor for fumigation shall retain a copy of the occupants fumigation notice for a period of at least three years. In case of multiple-family dwellings, the owner, manager or designated agent of the building may obtain signatures and/or verify the notification of the occupants.

The form shall state the name of the pest to be controlled, the pesticide(s)/fumigant(s) proposed to be used, the active ingredient(s) and the health cautionary statement as required under section 8538 of the code. The form shall also state that a lethal gas (poison) will be used in the building on indicated dates and that it is unsafe to return to the building until a certification notice for reentry is posted by the licensed fumigator. The form shall also indicate that the occupant has received the prime contractor's information regarding the procedures for leaving the structure.

The properly signed form or a copy thereof shall be in the possession of the licensed fumigator when the fumigant is released. Such form shall be attached to and become a permanent part of the fumigation log upon completion of the fumigation.

(b) Any death or serious injury relating to pesticide application or use, whether to a worker or member of the public, shall be reported to the nearest Structural Pest Control Board office immediately.

(c) Whenever a licensee employed by a branch 2 or branch 3 registered company applies a pesticide within, around or to any structure such person shall leave in a conspicuous location a written notice identifying the common, generic or chemical name of each pesticide applied. In case of a multiple family structure, such notice may be given to the designated agent or the owner. Such pesticide identification notice may be a door hanger, invoice, billing statement or other

similar written document which contains the registered company's name, address, and telephone number.

(d) All pest control operators, field representatives, applicators and employees in all branches shall comply in every respect with the requirements of section 8538 of the code. Failure to comply with section 8538 of the code is a misdemeanor and shall constitute grounds for discipline.

(e) Where notification is required under section 8538 of the code, and the premises on which the work is to be performed is a multiple family dwelling consisting of more than 4 units, the owner/owner's agent shall receive notification and other notices shall be posted in heavily frequented, highly visible areas including, but not limited to, all mailboxes, manager's apartment, in all laundry rooms, and community rooms on all external pest control servicing. Complexes with fewer than 5 units will have each affected unit notified. Any pest control servicing done within a tenant's apartment requires that the tenant be notified according to section 8538 of the code.

(f) A registered company which applies any pesticide within, around or to any structure shall provide to any person, within 24 hours after request therefore, the common, generic or chemical name of each pesticide applied.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8505.7, 8505.13 and 8538, Business and Professions Code.

§1991. Report Requirements Under Section 8516(b)10.

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

(1) Comply with the provisions of section 2516(c)(1) of Title 24 of the California Code of Regulations.

(2) Remove from the subarea all excessive cellulose debris in earth contact. This excludes shavings or other cellulose too small to be raked or stored goods not in earth contact. Stumps and wood imbedded in footings in earth contact shall be treated if removal is impractical.

(3) When evidence of moisture, infestations or infections exists as a result of faulty grade levels, earth fill planters or loose stucco, a recommendation shall be made to correct the condition. Any method of controlling infestations arising from these conditions is considered adequate if the infestation is controlled.

(4) Comply with the provisions of section 2516(c)(6.1) of Title 24 of the California Code of Regulations (Effective July 1992).

(5) Structural members which appear to be structurally weakened by wood-destroying pests to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

(6) Comply with the provisions of section 2516(c)(6) of Title 24 of the California Code of Regulations.

(7) Comply with the provisions of section 2516(c)(4) of Title 24 of the California Code of Regulations.

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:

(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or

(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or

(C) locally treat by any or all of the following:

1. exposing the infested area(s) for local treatment,

2. removing the infested wood,

3. using another method of treatment which exterminates the infestation. (If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")

When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.

When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean

termite tubes shall be removed where accessible-, except where a licensee is using an above ground termite bait station that requires the use of the termite tubes to be effective. Where a licensee is using an above ground termite bait station that requires the use of termite tubes to be effective, subterranean termite tubes can remain in place for the duration of the licensee's use of the termite bait stations. At the conclusion of the treatment, the subterranean termite tubes shall be removed.

(10) Comply with the provisions of section 2516(c)(2) of Title 24 of the California Code of Regulations.

(11) Correct any excessive moisture condition that is commonly controllable. When there is reasonable evidence to believe a fungus infection exists in a concealed wall or area, recommendations shall be made to open the wall or area.

(12) Repair a stall shower if it is found to leak when water tested for a minimum of fifteen (15) minutes after the shower drain has been plugged and the base filled to within one (1) inch of the top of the shower dam. Stall showers with no dam or less than two (2) inches to the top of the dam are to be water tested by running water on the unplugged shower base for a minimum of five (5) minutes. Showers over finished ceilings must be inspected but need not be water tested. If water stains are evident on the ceiling, recommendations shall be made for further inspection and testing.

~~(13) Restore any members of wooden decks, wooden stairs or wooden landings in exterior exposure to a condition where they are able to carry out their intended function. Recommendations for corrective measures will depend upon the extent of adverse exposure and existing degree of deterioration and may include any of the following:~~

~~(A) Refasten any wood members which are considered structurally functional but have become loose because of wood deterioration.~~

~~(B) Remove and/or replace structurally weakened portions of any wood member.~~

~~(C) Remove and replace all wood members if full function and safety cannot be restored by partial replacement and repair as in (B) above, remove and replace entire wood member.~~

(b) Preconstruction application of termiticide for protection from subterranean termites shall not be made at less than the manufacturer's label specifications.

(c) If in the opinion of the inspector a building permit is required, it must be noted on the wood destroying pests and organisms inspection report (Form No. 43M-41 as specified in section 1996 of the California Code of Regulations).

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8516, Business and Professions Code.

* Shaded area represents another pending rulemaking change waiting OAL approval.

§1996. Requirements for Reporting All Inspections Under Section 8516(b).

(a) A written inspection report conforming to section 8516(b) of the code (See Form No. 43M-41 (Rev. 10/01, required use effective July 1, 2003) at the end of this section) shall be prepared and ~~filed with the board~~ delivered to the person requesting the inspection, or to the person's designated agent regardless of whether the registered company has offered to perform the inspection without charge. The granting of permission to make an inspection shall be deemed a request to make an inspection.

~~(b) Reference to price may be deleted from the copy of the report filed with the board provided this is the only difference between the copy filed with the board and the copy that is delivered to the person who requested the inspection or to his or her designated agent.~~

~~(c)~~ (b) The failure or refusal of the person ordering the inspection or of his or her designated agent to pay for such inspection or report shall not excuse a registered company which has commenced an inspection from preparing and delivering a report and ~~filing a copy thereof with the board.~~ to the person requesting the inspection or the person's designated agent.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8516, Business and Professions Code.